

**ADDENDUM TO**  
**FINAL STATEMENT OF REASONS**

CALIFORNIA CODE OF REGULATIONS

TITLE 15: Chapter 1, Subchapter 4, Article 2, Section 3282.

**INMATE CONFIDENTIAL TELEPHONE CALLS**

These regulations also include additional changes that have been made to the originally proposed text. Upon review of the final rulemaking file, it was determined by the Office of Administrative Law that additional information was needed for the purposes of clarification. ~~In addition,~~ It was determined that the referenced Office of the Inspector General (OIG) report was utilized as a document relied upon to support the proposed changes to these regulations. A 15-Day Re-notice, which included the amended text and a copy of relevant pages from the OIG report, were forwarded to all individuals who within the original comment period, either provided comment to the originally proposed text or requested a copy of any additional changes.

**Subsection 3282(g) is amended with new language to the originally proposed text and is being adopted** to reflect that prior approval must be granted in order for an inmate to receive or place a confidential call with their attorney/attorney representative. These regulations are necessary in order to maintain safety and security for the Facility/Institution, inmates, staff, and the public due to the dialect content of a confidential telephone call being un-monitored by prison staff.

**Subsection 3282(g)(1)initial sentence is amended with new language to the originally proposed text and is being adopted** to reflect and specify the necessary personal and professional information that an attorney/attorney representative must provide, and the method of submittal in order to receive approval for a confidential phone call with an inmate. These regulations are necessary in order to maintain safety and security for the Facility/Institution, inmates, staff, and the public due to the dialect content of a confidential telephone call being un-monitored by prison staff.

**Existing text from subsection 3282(g)(1) secondary sentences are relocated and incorporated into new subsection 3282(g)(5).**

**New subsection 3282(g)(2) is amended with new language to the originally proposed text and is being adopted** to reflect additional information needed and specify the necessary declarations to be made under penalty of perjury, verification of client representation and need for the confidential phone call with an inmate in order to receive approval for a confidential phone call with an inmate. These regulations are necessary in order to maintain safety and security for the Facility/Institution, inmates, staff, and the public due to the dialect content of a confidential telephone call being un-monitored by prison staff.

**New subsection 3282(g)(3) is amended with new language to the originally proposed text and is being adopted** to reflect consequences an attorney may face if they provided false statements or deliberate misrepresentation of facts specific to information required. This was necessary in order to show necessary information was not only requested, but required.

**New subsection 3282(g)(4) is amended with new language to the originally proposed text and is being adopted** to specify upon receipt of the information specified in (g)(1), a California Law Enforcement Telecommunications System check of the attorney through the Department of Justice and verification of the attorney's credential through the governing state bar will be conducted. Once clearance has been approved, the attorney may schedule the confidential phone call with the inmate. In order to retain their approval/clearance, the attorney shall report any changes in personal and professional information, arrest history and declarations as noted in subsection (g)(2). New language was added in order to clarify changes to information given must be reported immediately and submitted to the Institution Litigation Coordinator. In addition, new language was added to inform requester on how often CLETS checks will be conducted.

**New subsection 3282(g)(8) is added to the originally proposed text and adopted** to inform the confidential phone call requestor of their right to appeal and what process to follow.

### **ASSESSMENTS, MANDATES AND FISCAL IMPACT:**

The Department, in proposing amendments to these regulations, has identified the Office of the Inspector General (OIG) report on the death of Correctional Officer Manuel A. Gonzalez at California Institution for Men, dated December, 2006 as a document relied upon to support the changes to these regulations.

### **SUMMARIES AND RESPONSES TO WRITTEN COMMENTS**

For clarification, in the following responses, underline indicates addition to the original response.

#### **Commenter #1:**

**Comment 1C:** Commenter states that the requirement for an attorney to describe past visiting exclusions or offenses is irrational and should be deleted.

**Accommodation:** None.

**Response 1C:** The Department is not certain as to the commenter's interpretation of irrational. The Department does contend that information on past visiting exclusions or offenses is necessary in order to maintain safety and security for the Facility/Institution, inmates, staff and the public. The necessity behind this rationale is that attorneys may be excluded from visiting or have a past conviction on their record that may not have resulted in disbarment; however, the offense may pose a threat to the safety and security for the Facility/Institution, inmates, staff and the public due to the un-monitored content of a confidential telephone.

**Comment 1E:** Commenter notes that CCR, Title 15, subsection 3282(g) requires inmates to pay to an emergency or confidential telephone call with funds from their trust account, with no provisions to an indigent inmate who may need such a call. Commenter feels that such provisions are essential and without them, the Department is discriminating against indigent inmates.

**Accommodation:** None.

**Response 1E:** The Department contends that with appropriate authentication of the caller, an inmate may receive a confidential call from the attorney or their representative as stated in CCR, Title 15, subsection 3282(g)(5). It is also the Department's position to make every reasonable effort to allow each inmate, whether indigent or not, the opportunity to make an emergency or confidential telephone call.

In addition, if an indigent inmate submits a trust account withdraw to place a confidential call to their attorney, a toll will be placed on their trust account as a negative balance hold for a period of 30 days. In turn, the Department will allow the indigent inmate to place a confidential phone call at the institution's expense. At the end of the 30 day hold, if funds were placed into the inmates trust account, the negative balance will be withdrawn or if the inmate continues to carry a zero trust account balance, the hold will be released.

**Commenter #2:**

**Comment 2A:** Commenter states in regards to subsection 3282(g)(4), that if the telecommunications system check and verification of good standing with the State Bar is not proceeded upon expeditiously by prison personnel, attorneys could fail to meet deadlines to abandon or dismiss an appeal or other legal issues.

**Accommodation:** None.

**Response 2A:** The Department understands the commenter's position and would like to ensure the commenter that every reasonable effort will be made by the Institution Litigation Coordinator to process each confidential phone call request as expeditiously as possible.

The Department would like to assure the commenter that the Institution Litigation Coordinator is not meant to be misconstrued as a hindrance to the process, but rather to be a liaison for the inmate's attorney to maintain contact with their client and to facilitate or maintain the inmates access to the courts, while at the same time maintaining the safety and security of the institution and ensuring compliance with approved departmental policies.

**Comment 2C:** Commenter's primary contention is that at times, prison personnel tend to believe her relationship with the inmate/client is too personal and as a result, a determination is made by someone in the Litigation Office to simply ignore the request for the confidential telephone call.

**Accommodation:** None

**Response 2C:** The Department contends that although the above comment/objection does regard an aspect or aspects of the subject proposed regulatory action or actions and must be summarized pursuant to Government Code Section 11346.9(b)(3), the comment/objection is either insufficiently related to the specific action or actions proposed, or generalized or personalized to the extent that no meaningful response can be formulated by the Department in refutation of or accommodation to the comment.

The Department understands the commenter's concern and notes that there is an appeals process she may utilize to refute any departmental policies, staff decisions and institution/facility procedures related to confidential phone calls as noted in new Subsection 3282(g)(8).

**Comment 2D:** Commenter states that attorneys are not known for attempting to assist their clients in escaping from prison or any other nefarious activity. The fact that attorneys have passed the bar, published appellate decisions, or be the attorney on record is an indication that we are legitimately doing our job for our clients.

**Accommodation:** None.

**Response 2D:** The Department understands the commenter's position; however, the Department notes that there have been instances where attorneys have aided in some form of illegal activity to their clients. The Department understands that such activity between attorneys and their clients if not a common occurrence, but all necessary precautions to prevent such activity must be taken in order to maintain the safety and security of the institution.

**Commenter #3:**

**Comment 3C:** Commenter requests that the Warden oversee all decisions to deny confidential phone calls in order to ensure consistency and add a necessary level of review to this important process. Commenter also requests that language stating such be added to subsection 3282(g)(3).

**Accommodation:** None.

**Response 3C:** The Department contends that the Institution Head or their Designee is fully capable to make an informed decision to approve/deny a confidential call request and maintain a level of consistency in the review process. It is the Institution Head's discretion to delegate responsibility to designated staff members with the expectation that they will make an informed decision on the approval or denial of a confidential call request.

The Department would also like to inform commenter that there is an appeals process that may be utilized to refute any departmental policies, staff decisions and institution/facility procedures related to confidential phone calls as noted in new Subsection 3282(g)(8).

**Commenter #4:**

**Comment 4A:** Commenter references subsection 3282(g)(1) and states that requesting attorneys should not be required to provide their date of birth, as this is a privacy issue. Commenter also states that requesting attorneys should not have to provide a valid driver's license number or State identification number, as the State Bar already affirms identity before issuing the bar number.

**Accommodation:** None.

**Response 4A:** Refer to Commenter 1, Response 1B. The Department asserts the required information is needed in order to verify that the requesting attorney/attorney representative is indeed the person they claim.

**Comment 4B:** Commenter references subsection 3282(g)(2) and disagrees with the requirement that attorneys shall report any prior felony convictions upon request for a confidential phone call, stating that if the attorney has not been disbarred or received a certificate of rehabilitation, it should not matter.

**Accommodation:** None.

**Response 4B:** Refer to Commenter 1, Response 1C.

Additionally, it is important for the attorney/attorney representative to disclose any prior felony convictions even though they have not been disbarred based on the need to maintain safety and security for the facility/institution, inmates, staff and the public. It is noted that there are felony convictions or arrest pending disposition which will not disbar an attorney but the very nature of the felony may pose a threat to the safety and security of the facility/institution, inmates, staff and the public.

**Comment 4C:** Commenter references subsection 3282(g)(4) and believes that CDCR should specify a time limit (5 working days within receipt of request) to process any verification and avoid undue delay.

**Accommodation:** None.

**Response 4C:** The Department understands the commenter's position and would like to ensure the commenter that every reasonable effort will be made by the Institution Litigation Coordinator to process each confidential phone call request as expeditiously as possible.

In addition, time frame requirements would not be feasible due to the Litigation Coordinators having to rely on other outside sources for the verification of information needed in order to obtain approval/clearance.

**Comment 4D:** Commenter states that attorneys should not have to provide information on jurisdictions licensed to practice law, as proof of current registry and good standing with a governing bar association should clarify this already.

**Accommodation:** None.

**Response 4D:** Please refer to Commenter #4, Response 4A.

**Comment 4E:** Commenter states that incarcerated inmates can call ex-felons and the Department can not keep an attorney who is an ex-felon from coming onto prison grounds to see his/her client during visiting.

**Accommodation:** None.

**Response 4E:** The Department notes that there is no way of knowing exactly who an inmate is calling from an inmate non-confidential telephone. If the incarcerated inmate is calling an ex-felon, it would be a call that is placed on an inmate monitored non-confidential telephone and must be generated as a

collect call. Ex-felons as well as attorney ex-felons have the right to apply for a visit with an inmate. If there is an offense in the individual's criminal history which would pose a threat to the safety and security of the facility/institution, the visiting applicant could be denied to visit.

The Department notes that for approval/clearance for a confidential phone call, the same criteria would apply. If there is an offense, either arrest or conviction, that an attorney has on their criminal history, it will be evaluated for either approval or denial of the confidential phone call. The difference here being a call placed on a monitored non-confidential telephone and a call place on an unmonitored telephone as confidential.

#### **Commenter #5**

**Comment 5B:** Commenter states that if an attorney calls the institution to speak with an inmate, staff should notify the inmate immediately and should be given the opportunity to speak with their attorney right away via any available phone.

**Accommodation:** None.

**Response 5B:** The Department contends that in accordance with subsection 3282(g), if an incoming call is determined to be a confidential matter, the caller's name and phone number shall be obtained and the inmate promptly notified of the situation. If the attorney calling is the attorney of record for the inmate and has already been cleared, the inmate may return the call at the earliest opportunity possible. However, the confidential call must still follow the guidelines set forth in subsections 3282(g)(1), 3282(g)(2) and 3282(g)(4). The Department further contends that an inmate can not be permitted to place a confidential phone call on any phone other than a prison phone as defined in subsection 3282(a)(5) in order to insure confidentiality of the conversation between the inmate and their attorney.

#### **15 DAY RE-NOTICE COMMENTS:**

**The public comment period for the 15 Day Notice of Change to Text commenced on November 7, 2007, and ended on December 7, 2007.**

#### **SUMMARIES AND RESPONSES TO 15 DAY RE-NOTICE:**

There were no public comments submitted during the 15 day re-notice.